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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

To: The Commission, *en banc*

JOINT COMMENTS IN RESPONSE TO SECOND
FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY

The Joint Commenters are fighting Ameritech's attempt in Michigan to eliminate Extended Local Calling Area ("ELCA") or "Reverse Billing" arrangements historically made available to wireless carriers as part of their Type 2A and Type 2B interconnection arrangements. These arrangements enable landline callers to reach cellular customers with a local call from anywhere in the cellular local calling area, which is much larger than the landline local calling area it overlays.

The Michigan PSC declined to order Ameritech to continue providing ELCAs, notwithstanding an extensive evidentiary record documenting that eliminating them would (1) materially degrade the quality of existing cellular service by rendering it more difficult and costly to use, thereby reducing public acceptance and use of cellular service; (2) substantially increase cellular carriers' costs of operation and decrease the value of their businesses; (3) cause substantial and unwarranted rate increases for vast numbers of consumers in Michigan who place calls to cellular mobiles; (4) disproportionately impact rural areas in Michigan adversely, (5) restrain incipient competition between cellular technology and landline technology in areas where such competition is currently feasible; and (6) enable Ameritech to use its monopoly power over interconnection arrangements to inhibit competition to Ameritech's own cellular affiliate.

Ameritech insists that it has the legal discretion to eliminate ELCAs, and that ELCAs will be entirely eliminated in Michigan after September 30, 1999. Ameritech continues to insist that it can eliminate ELCAs, notwithstanding its obligation to provide "shared transport" network elements on an unbundled basis under Section 251(c)(3) of the Act, combined with local and tandem switching network elements if the requesting carrier so desires. Ameritech refuses to recognize shared transport as a component of Type 2A and Type 2B wireless interconnection arrangements, professing vaguely that shared transport is somehow "not workable" for this purpose or somehow philosophically incompatible with the Act. However, as demonstrated herein, shared transport combined with local and tandem switching network elements provides the *exact* functionality needed by wireless carriers to establish ELCAs of their design and choosing.

The Commission's analysis in its *Third Order on Reconsideration* herein is plainly sufficient, without more, to justify ordering ILECs to continue providing shared transport on a blanket, unconditional basis to requesting carriers. Therefore, this Commission should not only promptly reaffirm the obligation of ILECs to provide shared transport network elements on an unbundled basis as established in the *Third Order on Reconsideration* herein, but it should also clarify or modify the definition of shared transport to make explicit that ILECs must make this network element available to wireless carriers on an unbundled basis, on request, as components in their Type 2A and Type 2B interconnection arrangements.

TABLE OF CONTENTS

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CENTENNIAL CELLULAR CORPORATION, CENTURYTEL WIRELESS, INC., THUMB CELLULAR LIMITED PARTNERSHIP and TRILLIUM CELLULAR CORPORATION (collectively the "Joint Cellular Carriers") respectfully submit their joint comments to the Federal Communications Commission in response to its Second Further Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding, FCC 99-70, published at 64 Fed. Reg. 20238 (26 April 1999). As their comments, the Joint Cellular Carriers respectfully state:

Summary of Position

As the Commission previously has been advised, Ameritech is attempting to eliminate all wireless Extended Local Calling Areas in Michigan over the objection of virtually the entire non-Ameritech cellular industry. The Commission determined in the *Third Order on Reconsideration* herein that ILECs must provide the "shared transport" network element on an unbundled basis over *all* their interoffice trunks, including those carrying the ILECs' own traffic, and must combine the shared transport element with unbundled local and tandem switching elements, if the requesting carrier so desires. As so defined and implemented, the shared transport element

provides the *exact* functionality needed by wireless carriers to implement Extended Local Calling Areas of their own design and choosing; and Ameritech is obligated by Section 251(c)(3) of the Act to provide access to shared transport upon request.

Nonetheless, Ameritech refuses to acknowledge this specific application of the shared transport network element or to provide it to wireless carriers for that purpose. Accordingly, the Commission not only should explicitly reaffirm the ILECs' obligation to unbundled shared transport as previously defined, but also should modify or clarify the definition to make explicit that ILECs are obligated to provide shared transport as components of Type 2A and Type 2B wireless interconnection arrangements.

Introduction

This proceeding has been initiated in response to the decision of the Supreme Court in *AT&T Corp., et al. v. Iowa Utilities Board, et al.,* 119 S. Ct. 721 (1999), which, in relevant part, vacated Section 51.319 of the interconnection rules ("Rule 319") promulgated in the *First Report and Order* herein.[1] The Supreme Court did so because in promulgating Rule 319 the Commission "did not adequately consider" the "necessary" and "impair" standards of Section 251(d)(2) of the Communications Act, as amended (the "Act"). That is, although the Court explicitly affirmed the Commission's identification in Rule 319 of the discrete network elements themselves, 119 S. Ct. at 733-734 (Part III.A), it vacated the rule nonetheless because the rule also established a blanket, unconditional requirement on the part of incumbent local exchange carriers ("ILECS") to make the identified elements available to requesting telecommunications carriers.

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[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (First Report and Order),* CC Docket No. 96-98, 11 FCC Rcd 15499 (1996)(the "*First Report and Order*").

See 119 S. Ct. at 734-736 (Part III.B). It was in establishing this blanket obligation, the Court held, that the Commission did not properly apply the "necessary" and "impair" standards of Section 251(d)(2) of the Act. (*Id.*).

Specifically, the Court held that the "Act requires the FCC to apply *some limiting standard* [in requiring ILECs to provide unbundled network elements], rationally related to the goals of the Act, which it has simply failed to do." (*Id.* at 734-735). (Emphasis added). The Court did not purport to determine what the appropriate "limiting standard" should be, but it did point out two defects in the Commission's analysis. First, the Court held that confining the inquiry to the availability of substitutes within an ILEC's own network, as the Commission did, effectively "allows *entrants*, rather than the Commission, to determine whether" the "necessary" and "impair" standards are satisfied, and hence that the "Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network." (*Id.* at 735). (Emphasis added).

Second, the Court held that the "Commission's assumption that *any* increase in cost (or decrease in quality) imposed by a denial of a network element renders access to that element 'necessary,' and causes the failure to provide that element to 'impair' the entrant's ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms." (*Id.*). (Emphasis added). The Court buttressed its analysis by citing illustrations where *de minimis* impacts on a competing carrier would nonetheless satisfy the interpretation of the statutory "necessary" and "impair" standard initially adopted by the Commission.

This proceeding thus endeavors to re-establish ILEC unbundling requirements under Section 251(c)(3) of the Act, and to do so in compliance with the Supreme Court's decision. The

NPRM identifies several issues for comment, specifically including "whether, in light of . . . experience in the marketplace since adoption of the . . . *First Report and Order,* the Commission should modify the definition of any of its previously identified network elements." (*Id.* at ¶34).

Interest in Shared Transport Network Elements

Each of the Joint Cellular Carriers provides cellular service in one or more Metropolitan Service Areas and/or Rural Service Areas in the State of Michigan. By reason of their experience with Ameritech over the past two years, it is abundantly clear that Ameritech (and likely other ILECs as well) refuses and will continue to refuse to acknowledge that cellular carriers are entitled under Section 251(c)(3) of the Act to utilize shared transport network elements on an unbundled basis as components of their Type 2A and Type 2B interconnection arrangements and, thus, to establish "Extended Local Calling Areas" or "ELCAs" (also commonly referred to as "Reverse Billing" arrangements[2]) of their design and choosing in providing their authorized cellular services.[3] The Joint Cellular Carriers respectfully submit, therefore, that the Commission should modify its definition of shared transport to make explicit that ILECs must unbundle the shared transport network element and make it available upon request, without collocation, as a

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[2] The term "Reverse Billing" actually is a misnomer perpetuated by ILECs; thus, the "ELCA" designation from the *NANC Proceeding* (see *infra*) will be employed in these comments.

[3] In their Joint Comments filed with the Commission on December 21, 1998, *In the matter of North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures,* NSD File No. L-98-134 (the *"NANC Proceeding"*), the Joint Cellular Carriers provided an extended discussion of ELCAs or Reverse Billing arrangements and the adverse effect on efficient NXX code utilization caused by Ameritech's attempt to eliminate them. That discussion provides additional useful background for the issues discussed herein.

component of Type 2A and Type 2B interconnection arrangements entered into with cellular and other wireless carriers.

As discussed in their Joint Comments in the *NANC Proceeding,* ELCAs or "Reverse Billing" arrangements are interconnection arrangements entered into between ILECs and wireless carriers that enable landline calling parties to reach a mobile customer with a local call to a single telephone number from anywhere in the wireless carrier's service area. The use of ELCAs by wireless carriers is necessary because their service areas typically cover multiple landline exchange areas and rate centers. Therefore, without an ELCA, some landline callers within the wireless local service area would *always* incur landline toll charges when calling wireless customers, *even when the wireless phone is next door to the landline phone.* Alternatively, in order to provide local landline access to a wireless phone throughout a wireless local service area, the wireless customer must enter into cumbersome and confusing service arrangements, such as maintaining multiple telephone numbers for the same phone and calling a different number depending upon where the landline phone happens to be located.

Either alternative is obviously undesirable from a customer service standpoint, and, as a consequence, the wireless industry for many years has attempted to negotiate interconnection arrangements with the ILEC industry affording wireless customers the benefits of ELCAs. *See, e.g., Domestic Public Land Mobile Radio Service,* 63 F.C.C.2d 87, 113-114 (1977) (New Dial Paging Service Plan); *Memorandum of Understanding,* 80 F.C.C.2d 352, 378-379 (1980) (Single Number Access Plan or "SNAP").

ELCAs have been available to wireless carriers in Michigan since Tariff M.P.S.C. No. 13 issued by Michigan Bell Telephone Co. became effective as a result of a settlement agreement

concerning interconnection matters was approved by the Michigan PSC on September 27, 1988, in Case No. U-9269. Substantially all of the cellular industry in Michigan not affiliated with Ameritech utilizes ELCAs extensively and relies heavily upon them. In addition to efficient number utilization, ELCAs are a vitally important marketing tool for cellular carriers in Michigan, and their availability is an important factor for consumers in Michigan in deciding to subscribe to and utilize cellular service, and in making cellular service "user friendly".

After passage of the Telecommunications Act of 1996 and implementing rules by this Commission, most of the cellular industry in Michigan entered into interconnection agreements with Ameritech. These agreements were approved by the Michigan PSC as contemplated by Section 252 of the Communications Act; and they uniformly provided for the continued availability of ELCAs to the cellular industry.[4] Trillium's agreement with Ameritech approved on June 25, 1997, is typical in this regard. Its Section 5.1 states in relevant part:

> 5.1 [Trillium] hereby elects to continue in effect Ameritech's [ELCAs] for the NXX codes currently active under this . . . option and for such additional NXX codes as may be designated in the future. * * * * *

Nonetheless, in October 1997, and without any prior notice to or consultation with the cellular industry, Ameritech filed revisions to its Tariff M.P.S.C. No. 20R unilaterally purporting to "grandfather" ELCAs for existing NXX codes through December 31, 1998, and to totally eliminate ELCAs after December 31, 1998. When the cellular industry was unable to convince

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[4] *See, e.g.,* MPSC Case Nos. U-11292 (AirTouch); U-11400 (Trillium); U-11403 (Century); U-11466 (Thumb Cellular); U-11606 (Centennial).

Ameritech to change its position voluntarily, formal complaints against its actions were filed and prosecuted at the Michigan PSC.[5]

During May 1998 a hearing was held before an Administrative Law Judge during which 11 witnesses testified, producing 874 pages of transcript, and 46 exhibits were admitted into evidence. In addition to promoting efficient NXX code utilization, the other public interest benefits of ELCAs were also fully documented in the record and argued to the PSC. Those public interest benefits include the fact that eliminating ELCAs would (1) materially degrade the quality of existing cellular service by rendering it more difficult and costly to use, thereby reducing public acceptance and use of cellular service; (2) substantially increase cellular carriers' costs of operation and decrease the value of their businesses; (3) cause substantial and unwarranted rate increases for vast numbers of consumers in Michigan who place calls to cellular mobiles; (4) disproportionately impact rural areas in Michigan adversely, (5) restrain incipient competition between cellular technology and landline technology in areas where such competition is currently feasible; and (6) enable Ameritech to use its monopoly power over interconnection arrangements to inhibit competition to Ameritech's own cellular affiliate.

The restraint of competition between wireless and wireline carriers inherent in eliminating ELCAs merits special comment, in light of the pro-competitive goals of the Telecommunications Act of 1996 and this Commission's repeated pronouncements that *fostering* wireless and

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[5] Centennial Cellular Corp. v. Ameritech Michigan, MPSC Case No. U-11620; and In the Matter of the Complaint of Century Cellunet, Inc. against Ameritech Corporation, Michigan Bell Telephone Co. d/b/a Ameritech Michigan, Ameritech Services, Inc. and Ameritech Information Industries Services, a division of Ameritech Services, Inc., on behalf of Ameritech Michigan, regarding Ameritech's purported unilateral termination of Type 2A interconnection with CMRS providers, MPSC Case No. U-11630. The complaints were consolidated for trial and decision; and the remaining JCCs intervened in the consolidated proceeding in support of the complainants.

wireline competition remains one of the Commission's most important priorities. In this regard, because cellular service areas cover multiple landline exchanges and rating points, wireless telephony is a viable competitive alternative to short-haul landline toll service between local landline exchanges.

Eliminating ELCAs means that a landline calling party incurs a toll charge for a call that formerly was treated as a local call (*i.e.,* no additional charge or a one message unit charge) by the landline calling party. The additional landline toll charge thus erects a substantial additional economic barrier to substituting wireless service for short-haul landline toll service. By unilaterally controlling the availability of ELCAs for wireless carriers, ILECs such as Ameritech are in a position to -- and blatantly do -- use that control to frustrate incipient competition between wireless service and wireline service.

To illustrate, Petoskey, MI, is 53 miles from Traverse City, MI, for landline calling purposes. Trillium includes both locations in its Traverse City ELCA; thus, a landline calling party in Petoskey calling a Trillium customer during the business day incurs no additional charge for making the call. Equally if not more important, since the call also is treated for dialing purposes like any other local exchange call, the landline calling party has just as much incentive (economic and otherwise) to call a cellular phone when it needs to communicate as it has to call another landline phone within the Petoskey local calling area.

In contrast, if Ameritech eliminates Trillium's ELCA for Traverse City, the landline calling party in Petoskey would incur a landline toll charge for, say, a two-minute call of 34 cents (if from a residence) or 49 cents (if from a business). Obviously, the imposition by Ameritech of a toll charge on the landline caller in this situation creates a substantial disincentive

to calling a cellular phone served by Trillium and, hence, acts as a substantial barrier to the competitive substitution of cellular service for landline service.

In her Proposal For Decision (the "PFD") issued June 25, 1998, ALJ Mace found Ameritech's withdrawal of ELCAs adverse to the public interest under Section 205 of the Michigan Telecommunications Act and recommended that the wireless carriers be granted the relief they requested.[6] ALJ Mace found that the wireless industry's need for ELCAs "goes to the heart of the wireless industry. The nature of the service is mobility combined with local calling areas. The FCC has recognized that the wireless industry is different from landline local exchange service, hence the institution of [ELCAs]." (PFD at p. 26). ALJ Mace thus concluded that "the local calling area is so integral to the [wireless] service that it is . . . unreasonable to expect that the wireless industry would not attempt to protect its customers from the diminution of their service." (*Id.*).

With respect to the competitive impact on Ameritech resulting from eliminating ELCAs, ALJ Mace found as follows:

> The Administrative Law Judge is persuaded that *one of the chief reasons for the withdrawal of [ELCAs] is . . . the concern of Ameritech that wireless service will eventually be a true threat to its hold on the basic local exchange market in Michigan . . . . Ameritech has successfully fended off true competition [in the provision of basic local exchange service] and the effort to eliminate [ELCAs] constitutes another such effort.* (PFD at pp. 26-27). (Emphasis added).

ALJ Mace ultimately concluded that "[f]or all of these reasons, the Administrative Law Judge finds that the elimination of [ELCAs] would be adverse to the public interest". (*Id.* at p. 26). (Emphasis added).

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[6] A copy of the Proposal For Decision is annexed hereinafter as Exhibit A for the Commission's convenient reference.

However, on exceptions taken only by Ameritech, the Michigan PSC declined to address *any public interest implication of eliminating ELCAs.*[7] Instead, the PSC ruled that the entire question should be dealt with as part of the process for negotiating interconnection agreements under Section 251 of the Communications Act, and that Ameritech is obligated under its existing agreements to offer ELCAs only through the expiration of its existing interconnection agreements.[8] Although Ameritech has "voluntarily" agreed to extend ELCAs to September 30, 1999 under threat of an injunction, Ameritech has consistently taken the public position that ELCAs in Michigan will in fact disappear on September 30, 1999, as allowed by the PSC's Opinion and Order.

Joint Comments on Second Further Notice

1. Shared Transport Network Elements Enable Wireless Carriers to Establish Extended Local Calling Areas of their Choosing, as of Right

An issue not presented to or addressed in the PSC proceeding, however, is the entitlement of wireless carriers under Section 251(c)(3) of the Act to employ the shared transport network element on an unbundled basis, without collocation, as a component of a Type 2A or Type 2B interconnection arrangement and, thus, to establish ELCAs of their design an choosing, as of

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[7] A copy of the PSC's Opinion and Order is annexed hereinafter as Exhibit B for the Commission's convenient reference.

[8] Rehearing of the PSC decision was denied on October 26, 1998, and complainants and intervenors have taken appeals of the decision to federal district court, to the extent it construed their Section 251 interconnection agreements, and to the Michigan Court of Appeals, to the extent it interpreted Michigan telecommunications law. *Centennial Cellular Corp. et al. v. Michigan Bell Tel. Co. d/b/a Ameritech Michigan, et al.,* Case No. 5:98-CV-159 (WD Mich, filed 11/25/98); *Centennial Cellular Corp. et al. v. Michigan Bell Tel. Co. d/b/a Ameritech Michigan,* Case No. 215920 (Mich. Ct. of Appeals, filed 11/25/98). The federal appeal was dismissed as not ripe with a finding by the Court, now disputed by Ameritech, that its interconnection agreement with Centennial provides for ELCAs through September 15, 2000.

right. As the Commission well knows, a Type 2A interconnection requires a dedicated connection (usually one more more DS-1 facilities) between an ILEC tandem office and the wireless carrier's switch (the "MTSO"), combined with the ILEC's common interoffice trunks between a tandem office and the end offices subtending the tandem. Accordingly, with a Type 2A interconnection, a wireless customer can directly call or be called by every landline telephone served by any end office which subtends the tandem where the Type 2A connection is established.

In the case of a Type 2B interconnection, there is a dedicated connection between an ILEC end office and the wireless carrier's MTSO identical to the 2A facility in a Type 2A interconnection connecting the wireless carrier's MTSO to the tandem office. In addition, this facility historically has been combined with a *dedicated* interoffice trunk connecting the gateway ILEC end office with a distant ILEC end office. A Type 2B interconnection thus enables a wireless customer to directly call or be called by only those landline telephones served by the distant ILEC end office to which the dedicated interoffice facility is connected.[9]

In a Type 2A interconnection, the wireless carrier typically pays the ILEC a flat monthly charge for the dedicated facility between the MTSO and the ILEC tandem, designed to compensate the ILEC for use of the facility for wireless-to-land calls. Additionally, the wireless carrier pays the ILEC a usage sensitive charge on a Minute of Use ("MOU") basis for transmission of the wireless-to-land calls from the point of interconnection at the ILEC tandem to the local loop of the called landline telephone.

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[9] Attached hereto as Exhibit C for the Commission's convenient reference is a copy of pertinent excerpts from Ameritech's Wireless Customer Ordering Handbook describing Type 2A and Type 2B interconnections.

On land-to-wireless calls through a Type 2A interconnection, a landline originated call within the landline local calling area in which the tandem office is located is treated for rating and dialing purposes like a call to any other landline telephone in that local calling area. That is, the landline party dials the call the same way as if calling a landline telephone (typically seven digits), and pays the ILEC either no additional charge (under flat rate local calling plans) or some type of message charge (where usage sensitive local calling has been implemented) just as if calling another landline phone in the local calling area. With implementation of reciprocal compensation arrangements in the wake of the Telecommunications Act of 1996, the ILEC typically also pays the wireless carrier terminating compensation in connection with such land-to-wireless calls.

On land-to-wireless calls through a Type 2A interconnection from *outside* the local landline calling area in which the tandem is located, the rating and dialing treatment of the call depends upon whether the ILEC is willing to allow the wireless carrier to establish an ELCA. If so, the landline originated call is treated for dialing purposes like any other local exchange call (typically seven-digit dialing) and the calling party incurs no additional charge in connection with the call. Instead, the wireless carrier pays a usage sensitive charge to the ILEC (usually access-equivalent rates) typically designed to pay for the transmission of the call from the point of connection of the calling party's local loop at the distant end office to the wireless carrier's point of connection at the ILEC tandem office. That usage sensitive charge becomes an operating cost to the wireless carrier and is recovered in the customary and usual monthly or airtime usage charges paid by the wireless customer.

On the other hand, if the ILEC will *not* permit the wireless carrier to establish ELCAs, as Ameritech is seeking to accomplish in Michigan, the landline calling party must dial 1+ seven or ten digits and pay a toll charge rated as if the call were terminating at the wireless carrier's MTSO. That is, notwithstanding that the MTSO is only an intermediary point in the transmission of the call, and notwithstanding that the called wireless phone may be and usually is physically located in the same landline local calling area of the calling party at the time the call is made, the ILECs insist upon the fiction that the call is being made only to the MTSO, and thus that the landline toll charge normally applying to calls to the physical location of the MTSO applies to the landline calling party.

By contrast, where a Type 2B interconnection is established, a landline originated call is *always* treated by the ILEC for rating and dialing purposes like a local exchange call to a landline telephone. Thus, in a Type 2B interconnection, the wireless carrier *always* is able to establish an ELCA to the distant end office, if necessary. The catch, however, is that a Type 2B interconnection historically has required the wireless carrier to pay for a dedicated interoffice facility between the gateway and distant ILEC end offices; and a dedicated interoffice facility can be cost justified only at very high levels of traffic between the end offices in question.

Therefore, the historical requirement for a dedicated interoffice facility effectively has equated to an *economic* embargo on using Type 2B connections to establish ELCAs. This is so as a practical matter because, given the smaller scale of wireless networks vis-a-vis landline networks, if there is sufficient land-to-wireless traffic between particular pairs of ILEC end offices to economically justify a wireless carrier paying for a dedicated DS-1 facility, the ILEC most likely will have already established Extended Area Service (EAS) calling arrangements

between those same two end offices. In such case the distant office will already be considered part of the local calling area for purposes of wireless interconnection arrangements and no ELCA needs to established for the purpose by the wireless carrier.

Thus, for practical economic reasons, the historical availability of Type 2B interconnection arrangements has still confined wireless local calling areas to the same limited local calling areas the ILECs establish for landline calling. Only where the ILECs historically have been willing to permit wireless carriers to establish ELCAs in connection with Type 2A interconnection arrangements -- which they now are systematically attempting to rescind -- have ELCAs been economically feasible for the wireless carriers to establish.

However, the legal foundation for ELCAs changed fundamentally with passage of Section 251(c)(3) of the Act and this Commission's implementation of that section in the *Third Order on Reconsideration* herein.[10] In the *TOR* the Commission explicitly established that ILECs must provide shared transport to requesting telecommunications carriers on an unbundled, MOU basis, over *all* of the ILECs' interoffice trunks -- including those carrying their own traffic -- between their tandem switches and end office switches, and between their end office switches themselves. (*See, e.g., TOR* at ¶¶22, 25-26). An ILEC thus is required "to offer requesting carriers access, on a shared basis, to the same interoffice transport facilities that the incumbent uses for its own traffic." (*Id.* at ¶22).

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[10] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Third Order on Reconsideration and Further Notice of Proposed Rulemaking),* CC Docket No. 96-98, 12 FCC Rcd 12460 (FCC 1997), *aff'd sub nom. Southwestern Bell Telephone Company, et al. v. FCC,* 153 F.3d 597 (8th Cir. 1998), *reh. den.* 1998 U.S. App. Lexis 30873 (4 Dec. 1998)(the "*TOR*").

Moreover, the Commission explicitly held that in providing shared transport to requesting carriers, "incumbent LECs may not unbundle switching and transport facilities that are already combined, *except on request by a requesting carrier*". (*Id.* at ¶44). (Emphasis added). Therefore, notwithstanding that local switching and tandem switching are themselves separate network elements, incumbent LECs may not separate local switching and tandem switching from shared transport *unless requested to do so by the requesting telecommunications carrier.*

Finally, in this regard, the Commission made explicit that part of an ILEC's local switching unbundling obligation is "to offer access to the routing table resident in the local switch to requesting carriers that purchase access to the unbundled local switch". (*Id.* at ¶23). This specifically includes the routing tables resident in both end office and tandem switches. (*Id.* at ¶23 & n. 69).

Therefore, since a wireless carrier already has a dedicated NXX code assigned to it in a Type 2A and Type 2B interconnection arrangement, if the wireless carrier obtains shared transport from an ILEC and combines it with local switching at the distant office and tandem switching (in a Type 2A arrangement) or local switching (in a Type 2B arrangement) in the gateway ILEC office, the ILEC necessarily is obligated to seamlessly route (according to the routing tables resident in the end office) and deliver landline originated calls to that NXX code from each distant end office where shared transport is obtained by the wireless carrier. That functionality is *exactly* the functionality required for wireless carriers to establish ELCAs of their own design and choosing; and it emanates directly from Section 251(c)(3) of the Act and the Commission's establishment of the shared transport network element thereunder.

The point is illustrated below. Diagram 1 is a copy of the illustration used by the Commission in the *Third Order on Reconsideration* to demonstrate the scope of the shared transport network element which an ILEC obligated to provide on an unbundled basis.

DIAGRAM 1: SHARED TRANSPORT NETWORK ELEMENT

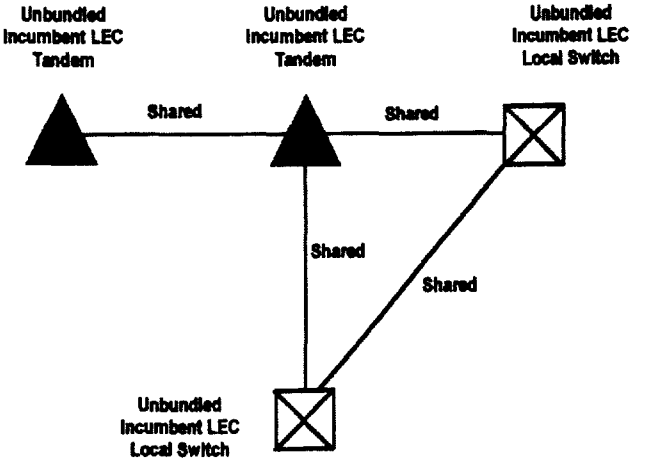
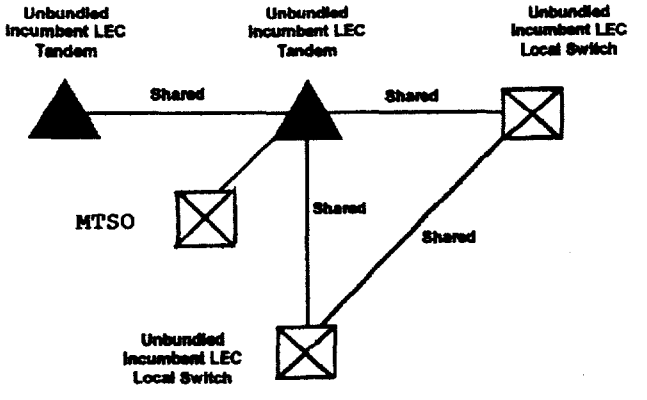


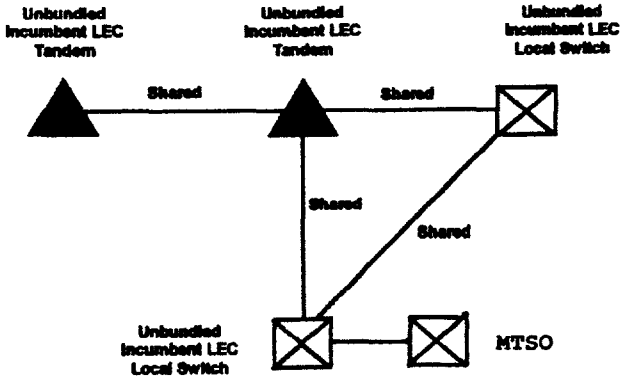
Diagram 2 simply superimposes a Type 2A wireless interconnection arrangement on the unbundled shared transport network element.

DIAGRAM 2: TYPE 2A INTERCONNECTION ARRANGEMENT



Similarly, Diagram 3 superimposes a Type 2B interconnection arrangement on the same unbundled shared transport network element.

DIAGRAM 3: TYPE 2B INTERCONNECTION ARRANGEMENT



As is apparent from comparison with the illustrations of Type 2A and Type 2B arrangements in Exhibit C *infra*, combining the shared transport network element with local and tandem switching elements produces *precisely* the same functionality as Type 2A and Type 2B interconnection arrangements. Thus, by being able to obtain such elements on request for carrying land-to-wireless traffic from distant end offices to the ILEC's gateway office, a wireless carrier can design its own ELCAs -- free of ILEC control -- thereby enhancing its wireless service offerings and enhancing its ability to directly compete with the ILEC's short haul toll offering.

2. The Definition of Shared Transport Should Be Modified or Clarified to Make Explicit that It Is Available to Wireless Carriers for Use as Components of Type 2A and Type 2B Interconnection Arrangements

Nonetheless, Ameritech refuses to acknowledge this implication of the unbundled shared transport network element, and thus continues to insist that it has the power and discretion to totally eliminate ELCAs in Michigan after September 30, 1999. Trillium, at least, has explicitly

raised the shared transport issue with Ameritech in their negotiations, and has been met only with vague and unsupported assertions that shared transport is somehow "not workable" for establishing ELCAs, or is otherwise somehow philosophically incompatible with the Act. Such position is inherently incredible, however, because exactly the same facilities are now in place and are performing *exactly* the functions desired by the Joint Cellular Carriers. Clarification and/or modification of the definition of shared transport in this proceeding thus is urgently required in the public interest to eliminate any possible justification for Ameritech's and other ILECs' continued refusal to make ELCAs routinely available to wireless carriers, upon request, as components of their Type 2A and Type 2B interconnection arrangements.

To do so the Joint Cellular Carriers suggest that a phrase be added to the existing definition in Section 319(d)(1)(ii) of the rules so that, as amended, it reads substantially as follows:

> (ii) Shared transport, defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network, <u>including components of Type 2A and Type 2B wireless interconnection arrangements</u>. (Added language is underscored).

In this regard, there can be no doubt whatsoever, that the shared transport network element, both as defined in the *Third Order on Reconsideration* and as modified herein, fully complies with the "necessary" and "impair" standard of the Act as construed by the Supreme Court. As an initial matter, as the Commission previously found, the "necessary" standard is not even implicated because the facilities in question are not proprietary. (*TOR* at ¶33). Nor can there be any question that failure to provide unbundled shared transport would in fact "impair"

the ability of wireless and other telecommunications carriers to provide their desired services, within the meaning of Section 251(d)(2)(B) of the Act.

The Supreme Court's decision is clear enough that a *material, non-trivial* impairment of the ability of requesting carrier's to provide their competing service is sufficient under the statutory standard. Therefore, the Joint Cellular Carriers submit that the Commission's analysis of this issue in the *Third Order on Reconsideration* is already sufficient, without more, to comply with the Supreme Court's objections to the analysis in the *First Report and Order.* Indeed, the Commission's analysis in the *Third Order on Reconsideration* was not even before the Court for review; and the Court nonetheless suggested that the *First Report and Order* would have passed muster if an analysis similar to that in paragraphs 521 and 522 had been applied consistently throughout.[11] Simply by comparing the analysis in paragraphs 521 and 522 with the Commission's analysis in the *Third Report and Order* (*e.g., TOR* at ¶¶34-35), it is readily evident that the analysis supporting the shared transport network element fully complies with the Supreme Court's interpretation of "impair".

The same is true also in the specific context of wireless interconnection and service arrangements. The shared transport and switching facilities in question are "essential facilities" under any possible interpretation of that doctrine and, as shown by the discussion above, failure to provide them to wireless carriers would substantially and materially degrade the quality and utility of the services they desire to provide to the public. Nothing more is required under Section 251(d)(2) to justify ordering ILECs to provide them on a blanket, unconditional basis.

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[11] *See AT&T Corp., supra,* 119 S. Ct. at 736 ("Though some of these sections contain statements suggesting that the Commission's action might be supported by a higher standard, see, e.g., ¶¶521-522, no other standard is consistently applied . . . . ").

Conclusion

For the reasons stated above, the Commission should clarify the status of the shared transport network element by reaffirming and reinstating its findings and conclusions of the *Third Order on Reconsideration* herein, and should modify or clarify its definition of shared transport to make explicit that ILECs must make shared transport available to wireless carriers, on request, as components in their Type 2A and Type 2B interconnection arrangements.

Respectfully submitted,

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